SUPREME COURT OF THE UNITED STATES.

No. 78.—October Term, 1927.

A. B. Leach & Company, Inc., Petitioner, vs. Walter Peirson	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 21, 1927.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit by Peirson against the petitioner upon an alleged agreement to repurchase at any time and at the purchase price bonds sold by the petitioner to the plaintiff. The petitioner is a bond house doing a large business, and the only evidence of its having made such a contract was the testimony of the plaintiff that Mather, a salesman, made the promise on the petitioner's behalf, coupled with a letter the admissibility of which is the question here. The purchases were on June 19, 1920, September 23, 1920, and February 28, 1921. The plaintiff testified that on May 9, 1921, he wrote to the petitioner that when he made the second purchase "it was agreed by Mr. Mather that at any time I so desired you would take them off my hands at cost 98. I have need of some money and will avail myself of this privilege. When shall I deliver them to you." The officers of the petitioner denied ever having received the letter and denied the authority of Mather to make any such agreement. It may be mentioned further, although it is not relevant to the question here, that Mather denied having made the contracts alleged. The letter was offered in evidence. It was objected to as a self serving document but was admitted subject to exceptions. There was no other evidence of Mather's authority, but the jury were instructed that if the petitioner received the letter and failed to disaffirm what Peirson said Mather had done they would be justified in finding that the petitioner acquiesced in the agreement and that Mather had authority to do what Peirson said he did. The plaintiff got a verdict and judgment and the judgment was affirmed by the Circuit Court of Appeals, 16 F. (2d)

86. On a suggestion of conflict between this and other Circuit Courts of Appeal and of failure to conform to the rule of evidence in Pennsylvania, (a failure in no way affected by the fact that the same rule prevails in most Courts of high authority,) as also of a difference among the Courts as to the scope of the Conformity Acts, a writ of certiorari was granted by this Court. 273 U. S. 676.

A man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts. He no more can impose a duty to answer a charge than he can impose a duty to pay by sending goods. Therefore a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission. *Fraley* v. *Bispham*, 10 Pa. 320. *Kann* v. *Bennett*, 223 Pa. 36, 47. *Packer* v. *United States*, 10 Fed. Rep. 906. *Woolsey* v. *Haynes*, 165 Fed. Rep. 391. *Thrush* v. *Pullhart*, 210 Fed. Rep. 1, 6. *Harris* v. *Egger*, 226 Fed. Rep. 389, 399. *Kuman* v. *Fine*, 229 Mass. 75. *Viele* v. *McLean*, 200 N. Y. 260. *Eschards* v. *Gellatly*, L. R. 7, C. P. 127, 131. *Wiedemann* v. *Walpole*, [1891] 2 Q. B. 534, 539. *Thomas* v. *Jones*, [1920] 2 K. B. 399, [1921] 1 K. B. 22.

There were no circumstances in this case to take it out of the general rule. The letter might have been admissible as a demand if a binding contract had been proved, but until evidence of Mather's authority was given the demand was immaterial. It is true that two days after that on which the plaintiff says that he wrote the letter that we have quoted the petitioner lent to the plaintiff $15,000 on the security of the $20,000 bonds in question with the usual powers of sale and the plaintiff's note. It would be the merest speculation to regard the plaintiff's story as confirmed by this loan. It may as probably have been an independent transaction, and it might be argued at least as plausibly that the plaintiff's note and assent to the severe conditions of a pledge to brokers was inconsistent with the right that he now asserts. No evidence having been given of Mather's authority to make the contract in suit the petitioner was entitled to a verdict. The request that one should be directed should have been granted. A new trial must be awarded.

Judgment reversed.